

II. NON-COMPLIANCE

The Examiner has indicated that “upon further review of the claims in support for the potential interference, Examiner discovered that claims 44-50, 54, 55, 58-61 are not in fact readable on the elected species illustrated in Figure 25.” The Examiner notes that “[a]s supported by the specification on page 23, the elected embodiment is attached to the lamina and therefor[e] does not support the language in claims 44-50, 54, 55, 58-61.” Based on this position, the Examiner has requested that Applicant restate the claims and withdraw all claims not directed to elected Figure 25.

Applicant respectfully disagrees with the Examiner’s assertion and requests reconsideration and withdrawal of the Notice of Non-Compliant Amendment.

The embodiment of elected Figure 25 has an *optional* laminar attachment. Therefore, devices with or without a laminar attachment are supported by elected Figure 25.

Additionally, Applicant notes that not all claims provide that “no portion of the device be supported by the lamina.” For example, claim 58 (Copied Claim 15), does not contain that negative limitation.

Further, as provided for in the specification, the device of Figure 25 is suitable for use when there has been a “wide decompressive laminectomy.” (*See*, Specification, p. 23, Ins. 21-24, Paragraph [0116] of the publication). Moreover, the device *may* have a lamina attachment hole. (*See, id.*). The application further provides that the hemi-lamina/facet prostheses are used in situations where some *or all* of the lamina has been removed. (*See*, Specification, p. 22, Ins. 19-27; Paragraph [0113] of the publication). If the device of Figure 25 is suitable for use when all of the lamina has been removed, then the device of Figure 25 need not be supported by the lamina as provided for in claims 44-50, 54, 55, 59-61.

In view of the fact that Figure 25 supports all of the currently allowable claims, Applicant requests that the Examiner withdraw the Notice of Non-Compliance.

CONCLUSION

For the foregoing reasons, Applicant requests that the Examiner consider the Amended Suggestion of Interference submitted on May 11, 2006 as fully responsive. Furthermore, Applicant requests that an early and favorable action declaring an interference between the present application and U.S. Patent 6,565,605 (Goble) be issued.


FEE AUTHORIZATION

The Commissioner is authorized to charge any additional fees which may be required, including petition fees and extension of time fees, to Deposit Account No. **23-2415** (Docket No. 29914-701.401).

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Respectfully submitted,

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